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8 UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
9 SACRAMENTO DIVISION

10 In Re:	)	Case No. 2019-25214
)	
11 MICHAEL YBARRA ,	)	Doc. No: DEF-002
)	
12 Debtors.	)	MOTION TO CONFIRM SECOND
	)	AMENDED CHAPTER 13 PLAN
13)	
14	)	Date: April 21, 2020
	)	Time: 10:00 A.M.
15	)	Judge: Christopher D. Jaime
	)	Place: Department B, Courtroom 34
16	)	United States Bankruptcy Court
	)	500 I Street, Sacramento, CA

17
18 TO ALL PARTIES OF INTEREST AND THEIR ATTORNEYS:

19 Debtor, by and through his attorney David Foyil of EqualJusticeLawGroup.com, Inc.,
20 hereby request that Debtor's Second Amended Chapter 13 Plan be confirmed as follows:

21 **DURING BANKRUPTCY**

- 22 1. The Debtor filed the petition in this case on August 20, 2019, due to an over
23 extension of debt which he could no longer afford to service.
- 24 2. The Meeting of Creditors was held on October 2, 2019, and continued to October
25 16, 2019.
- 26 3. On October 4, 2019, the trustee filed an Objection to Confirmation because debtor
27 failed to bring his Social Security card to the meeting, which resulted in the Meeting of
28 Creditors being continued to October 16, 2019.

1 4. On October 24, 2019, the trustee withdrew his Objection to Confirmation.

2 5. On October 16, 2019, the Motion to Confirm the First Amended Chapter 13 Plan
3 was filed. On December 2, 2019, the trustee filed an Opposition to the Motion to Confirm the
4 First Amended Chapter 13 Plan. On December 17, 2019, the Court denied the Motion to
5 Confirm the First Amended Chapter 13 Plan.

6 6. On February 4, 2020, the trustee filed a Motion to Dismiss.

7 **SECOND AMENDED CHAPTER 13 PLAN**

8 7. The Second Amended Chapter 13 Plan is being filed because the debtor needed
9 to propose a more feasible plan. The proposed Second Amended Chapter 13 Plan provides
10 for the following creditors:

11 **A. Class 1 Creditor- Lakeview Loan Servicing, LLC c/o Cenlar FSB**

12 8. The chapter 13 plan provided for Lakeview Loan Servicing, LLC c/o Cenlar FSB
13 as Class 1 Creditor with the total amount of arrears being forty-one thousand four hundred
14 thirty-one and 99/100 dollars (\$41,431.99).

15 9. On October 29, 2019, Lakeview Loan Services, LLC c/o Cenlar FSB filed a Proof
16 of Claim. The total amount arrears listed within the Proof of Claim was forty-one thousand four
17 hundred thirty-one and 99/100 dollars (\$41,431.99) and the ongoing monthly payment was
18 listed at two thousand six hundred twelve and 86/100 dollars (\$2,612.86).

19 10. The Second Amended Chapter 13 Plan provides for Lakeview Loan Services, LLC
20 c/o Cenlar FSB as Class 1 Creditor with the total amount of arrears of forty-one thousand four
21 hundred thirty-one and 99/100 dollars (\$41,431.99) and the ongoing monthly payment as two
22 thousand six hundred twelve and 86/100 dollars (\$2,612.86).

23 **B. Class 2 Creditor- Twenty-One-Eighty-Five, LLC c/o State Farm Bank**

24 11. The Chapter 13 Plan provided for Twenty-One-Eighty-Five, LLC c/o State Farm
25 Bank as a Class 2 Creditor in the amount of thirteen thousand five hundred forty-one dollars
26 (\$13,541), with an interest rate of 4.84 percent (4.84%).

27 12. On January 9, 2020, Twenty-One-Eighty-Five, LLC c/o State Farm Bank filed a
28

1 Proof of Claim in the amount of eleven thousand three hundred sixty-eight and 97/100 dollars
2 (\$11,368.97).

3 13. The Second Amended Chapter 13 plan proves for Twenty-One-Eighty-Five, LLC
4 c/o State Farm Bank as a Class 2 Creditor in the amount of eleven thousand three hundred
5 sixty-eight and 97/100 dollars (\$11,368.97), with an interest rate of 4.84 percent (4.84%).

6 **SECTION 1322 ANALYSIS**

7 14. Based upon the foregoing and the evidence in support of this motion, Debtor
8 asserts that the proposed plan complies with section 1322 as follows:

9 A. The schedule I filed concurrently herewith, lists all future projected earnings and
10 all other income. The Debtor also asserts that he has reasonably projected all his expenses
11 within Schedule J. The Debtor asserts that he has provided for the submission of all or such
12 portion of future earnings or other future income of the debtor to the supervision and control
13 of the trustee as is necessary for the execution of the plan, such that all of his monthly
14 disposable income from his projected future earnings after deduction for his reasonable
15 expenses are to be paid to the chapter 13 trustee in order to fund the proposed plan.

16 B. According to the Debtor, he does not have any unsecured priority debt.

17 C. The plan is comprised of seven different classes (as provided using the
18 mandated local form adopted for use by the Eastern District of California for use in all Chapter
19 13 cases. As mandated within said form, the claims of creditors within each class shall
20 receive the same treatment within each respective class.

21 D. No creditor entitled to priority under Section 507 shall receive less than full
22 payment of the amount of that portion of its claim which is either secured or entitled to priority.
23 Accordingly, Section 1322(a)(4) is not applicable to this proceeding.

24 E. The only class of unsecured creditors in this case are those identified as Class
25 7 claims as provided within the mandated Eastern District of California form plan. All claims
26 within this class shall receive identical treatment and shall be paid a dividend of zero percent
27 (0%). All creditors in this case are "consumer debts." No person or entity who has any claim
28

1 or right superior to any creditor classified as a general unsecured claim shall receive any right
2 or treatment under the plan in priority inferior to any Class 7 claim. However, it should be
3 noted that the plan does provide that the Debtor shall retain all exempt property as part of this
4 plan.

5 F. The Debtor has one creditor listed as Class 2 pursuant to the Court's mandated
6 form plan (Secured Creditors Whose Claims are Modified by the Plan).

7 G. The plan provides to pay this unsecured priority claim in full, which, of course, will
8 cure any and all defaults. The plan proposes to discharge all general unsecured claims.

9 H. No unsecured claim shall be paid prior to or concurrent with any secured claims.

10 I. Debtor does not anticipate any claims subject to Section 1305. This plan does
11 not provide for nor include any post-petition claims.

12 J. There are no executory contracts nor unexpired leases at issue in this
13 proceeding.

14 K. The Debtor is funding this plan solely from the contribution of his future monthly
15 disposable income. He has not proposed the sale or liquidation of any property in order to
16 fund any part of the proposed plan.

17 L. The plan provides that the assets of the bankruptcy estate shall not re-vest to the
18 debtor until conclusion of the case.

19 M. The Debtor has filed the required form B22 which sets forth the Debtor's income
20 during the six month period immediately preceding this case and her monthly expenses as
21 provided pursuant to the maximum monthly limitations as determined to be reasonable under
22 section 1322(d). Accordingly, the proposed plan shall not be less than five years, and the
23 Debtor has projected a monthly chapter 13 plan payment which exceeds the minimum amount
24 to which holders of general unsecured claims would be entitled to received pursuant to
25 Section 1322(d)

26 N. The proposed plan does not propose to alter any contractual agreement to repay
27 any loan described in Section 362(b)(19). Therefore, the Debtor has provided the same
28 treatment for each claim within a particular class of claims.

1 15. The Second Amended Chapter 13 Plan complies with 1322(b). The Debtor asserts
2 that he did not discriminate unfairly against any class that was provided in section 1122 of this
3 title [11 USCS Section 1122];

4 1. The Chapter 13 Plan lists one secured creditors as Class 2 creditor.
5 The Debtor asserts that he only modified the rights of holders of secured
6 claims, other than a claim secured only by a security interest in real
7 property that is the debtor's principal residence, or of holders of
8 unsecured claims, or leave unaffected the rights of holders of any class
9 of claims;

10 2. This Chapter 13 Plan provides for the curing or waiving of any default;

11 3. This Chapter 13 Plan provides for payments on any unsecured claim to
12 be made concurrently with payments on any secured claim or any other
13 unsecured claim;

14 4. The Chapter 13 Plan pays any default within a reasonable time and
15 maintenance of payments while the case is pending on any unsecured
16 claim or secured claim on which the last payment is due after the date
17 on which the final payment under the plan is due;

18 5. The Chapter 13 Plan provides for the payment of all or any part of any
19 claim allowed under section 1305 of this title [11 USCS Section 1305;

20 6. The Chapter 13 Plan provides for the assumption, rejection, or
21 assignment of any executory contract or unexpired lease of the debtor
22 not previously rejected under section 11 USCS Section 365;

23 7. The Chapter 13 Plan provides for the payment of all or part of a claim
24 against the Debtor from property of the estate or property of the Debtor;

25 8. The Chapter 13 Plan provides for the vesting of property of the estate,
26 on confirmation of the plan or at a later time, in the debtor or in any other
27 entity;

28 9. The Chapter 13 Plan provides for the payment of interest accruing after

1 the date of the filing of the petition on unsecured claims that are
2 nondischargeable under section 1328(a) [11 USCS Section 1328(a)],
3 except that such interest may be paid only to the extent that the debtor
4 has disposable income available to pay such interest after making
5 provision for full payment of all allowed claims; and includes any other
6 appropriate provision not inconsistent with this title.

7 16. The Chapter 13 Plan complies with 1323(c) the debtor declares that:

8 A. Any holder of a secured claim that has accepted or rejected the plan is
9 deemed to have accepted or rejected, as the case may be, the plan as
10 modified, unless the modification provides for a change in the rights of
11 such holder from what such rights were under the plan before
12 modification, and such holder changes such holder's previous
13 acceptance or rejection.

14 17. The Chapter 13 Plan complies with 1325(a) the debtor declares that:

15 A. The Plan complies with the provision of this chapter and with other
16 applicable provisions of title 11 of the United States Code;
17 B. Any fees or charges required by 28 U.S.C. Section 123 have been paid
18 in full;
19 C. The plan is proposed in good faith and not by any means forbidden by
20 law;
21 D. The value, as to the effective date of the plan, of property to be
22 distributed under the plan on account of each allowed unsecured claim
23 is not less than the amount that would be paid on such claim if the estate
24 of the debtor were liquidated under chapter 7 of title 11 of the United
25 State Code on such date;
26 E. All secured creditors provide for have either accepted the plan or the
27 debtor has provided for the surrender of property securing their claims,
28 and the plan provides to pay the creditors pursuant to section

1 1325(a)(5)(B);

2 F. Debtor will be able to make the plan payments under the plan and
3 comply with the plan;

4 G. Debtor's petition was filed in good faith;

5 H. Debtor has paid any and all amounts that are required (if any) to be paid
6 under a domestic support obligations and that first become payable
7 after the date of the filing of the petition if the debtor is required by a
8 judicial or administrative order or by statute, to pay such domestic
9 obligation; and

10 I. Debtor has filed all tax returns that are required to be filed.

11 18. The Chapter 13 Plan meets the requirements set out in 11 U.S.C. §§1322(a),
12 1322(b), 1323(c), and 1325(a) for confirmation of chapter 13 plans.

13 19. The Debtor asserts that by proposing a reasonable budget and proposing to pay
14 all of his monthly disposable income to the chapter 13 trustee for the five year term of the plan,
15 by not retaining any non-exempt property, nor proposing to retain any assets which are not
16 reasonable and necessary to an effective reorganization, that he filed the petition in good faith
17 and is his best effort to resolve his debt problems.

18 **Fees**

19 20. The Debtor has paid all fees or charges required by the Court.

20 **Assets and Exemptions**

21 21. The value of the real and personal property has been listed within Schedules A and
22 B. All of these assets have been exempted under California C.C.P. § 704.010 et. sec. or
23 C.C.P § 703.140(b).

24 **Chapter 7 Liquidation**

25 22. To confirm the Plan, the Court must find that all creditors and equity interest holders
26 who do not accept the Plan will receive at least as much under the Plan as such claim and
27 equity interest holders would receive in a Chapter 7 liquidation. In addition to an analysis of
28 Schedules A, B, and C, the Chapter 13 Statement of Current Monthly Income and Calculation

1 of Commitment Period and Disposable Income ("Form B22C") was used to compute a
2 Chapter 7 liquidation test with figures from 6 months of pay advices prior to the filing.
3 According to the Form B22C the household annualized current monthly income is twenty-two
4 thousand four hundred forty-nine and 12/100 dollars (\$22,449.12). The median family income
5 for the applicable state and household size is ninety-six thousand eight hundred thirteen
6 dollars (\$98,813). According to the calculation required by the Form B22C the applicable
7 commitment period is three years. There is no disposable income determined under section
8 1325(b)(3).

9 **Feasibility**

10 23. Having reviewed the Chapter 13 Plan, including the "Plan Payments and Term"
11 (which outlines both the monthly payments to the Chapter 13 trustee and the period of time that
12 the debtor will make those payments), as well as the applicable "Additional Provisions," if any,
13 he believes that he will be able to make these payments to the Chapter 13 trustee; and, the
14 Debtor is willing to do so.

15 **Income and Expenses**

16 24. My income was calculated by reviewing debtor's wife and his pay advices. The
17 average income listed within his Schedule I is five thousand four hundred fifty and 83/100
18 dollars (\$5,450.83). The total monthly expenses listed within the Schedule J are two thousand
19 forty and 83/100 dollars (\$2,040.83). The debtor can afford this payment because the
20 disposable income is three thousand four hundred ten dollars (\$3,410).

21 25. The Debtor has filed the Updated Schedule I and Schedule J concurrently to show
22 the current income and expenses. The changes to the Schedule I and J are as follows:

23 **A. Jenny Ybarra's Income**

24 26. Debtor's previous Schedule I listed his wife's income, Jenny Ybarra, in the amount
25 of nine hundred dollars (\$900). Debtor's wife's income is now less, therefore, he has changed
26 it on the updated Schedule I. Debtor's wife's income is seven hundred twenty 83/100 dollars
27 (\$720.83).

28 **B. Childcare and children's education expenses**

28. The Debtor can afford the payment increase in month 25 because his wife will be earning more money. The debtor's wife is a relator and is building a business. The debtor believe that her income will be higher in month 25 and she will be able to afford to contribute to the chapter 13 plan.

29. The Debtor does not have any domestic support obligations.

30. The Debtor has filed all federal, state, and local tax returns required of him for tax periods ending four years prior to the petition date.

31. The Bankruptcy Code allows debtor to request modification of his plans at any time after confirmation of the plan but before the completion of payments under such plan for the purpose of increasing or reducing the amount of payments, extending or reducing the time for such payments, altering the amount of the distribution of a creditor, or reducing amounts to be paid to allow debtor to purchase health insurance. See 11 U.S.C. §§ 1329 (a).

WHEREFORE, Debtor requests that his Second Amended Chapter 13 Plan be confirmed.

/s /David Foyil
David Foyil,
Attorney for Debtor.